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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,026	01/10/2001	John Clarke III	17163/04093	8117

24024 7590 06/03/2003

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CLEVELAND, OH 44114

EXAMINER

JACKSON, ANDRE K

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 06/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/758,026

Applicant(s)

CLARKE ET AL.

Examiner

Andre' K. Jackson

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-12,19,20 and 29-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30-34 is/are allowed.
- 6) ☒ Claim(s) 1,3-8,19 and 20 is/are rejected.
- 7) ☐ Claim(s) 9-12 and 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

## DETAILED ACTION

### *Claim Objections*

1. Claim 6 is objected to because of the following informalities:

Regarding claim 1, line 3 "bosses" should be --boss--.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,2,4,8 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Huse.

Regarding claim 1, Huse discloses a "Storage tank assembly" which has a seamless tank shell (20) having an outer surface with a fuel withdrawal assembly (70) mechanically fastened to the tank and a plurality of bosses (26,28) having a threaded portion and a fuel withdrawal assembly (76), which includes a threaded portion engaged with the threaded portion of one of the bosses.

Regarding claim 4, Huse discloses where the withdrawal outlet piece is capable of a 360° rotation when engaged with the fuel withdrawal assembly (Column 4, line 7).

Regarding claim 8, Huse discloses a direct-sight fuel gauge (54) having a threaded portion engaged with the threaded portion of one of the bosses (Figure 2).

Regarding claim 20, Huse discloses where the tank shell is made from high-density polyethylene.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3,5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huse.

Regarding claim 3, Huse does not disclose where the fuel withdrawal assembly is engaged with one of the plurality of bosses by one and one-half revolutions of sealing force. However, it is considered a design choice and clearly within the purview of the skilled artisan to vary the threads on the bosses to change the revolutions of sealing force.

Regarding claim 5, it is considered a design choice and within the purview of the skilled artisan to have a boss engaged within the interior space of the tank shell. Huse does not disclose where the withdrawal assembly extends less than 1.5 inches above the outer surface of the tank shell. However, constructing a fuel tank for a lawn mower would have the fuel withdrawal assembly extend less than 1.5 inches.

Regarding claim 6, it is considered a design choice to have the rotatable fuel withdrawal comprise a split-nut housing. Huse discloses a withdrawal that rotates without the aid of the split-nut assembly.

6. Claims 7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huse in view of Pemberton et al.

Regarding claims 7 and 19, Huse does not disclose where one of the bosses to which the fuel withdrawal assembly is comprised of a lower flange with a lower surface that engages the capped end to form a seal. However, Pemberton et al. discloses a "Fuel tank with a recessed fill cap" that discloses fill cap that is comprised of a lower flange with a lower surface that engages the capped end to form a seal (Figure 2). Therefore, to modify Huse to include where one of the bosses to which the fuel withdrawal assembly is comprised of a lower flange with a lower surface that engages the capped end to form a seal as taught by Pemberton et al. to ensure a non leakage seal when closed.

7. Claims 9-12 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. Claims 30-34 are allowed.

Regarding claim 30, prior art found and relied upon did not disclose “a gauge neck having a lower portion having threads, an upper portion having threads, and an interior wall having a gauge cap having threads wherein the lower portion of the gauge neck is threadedly connected to said one of said plurality of bosses the gauge cap is threadedly connected to said upper portion of the gauge neck” in combination with the remaining limitations of the claim.

#### ***Response to Arguments***

9. Applicants arguments filed 03/26/03 have been fully considered but they are not persuasive.

Applicants argue that the reference Huse does not disclose a withdrawal assembly mechanically fastened directly to the tank shell. Examiner agrees. However, there is nothing in the claim, which suggests that the withdrawal assembly is mechanically fastened directly to the tank shell. While Huse's invention has a fixture between the tank and the

withdrawal assembly there is no indication as to why the invention of Huse would not function properly without the additional component present. It is, of course, apparent that the elimination of the fixture eliminates the function of that element. It is well settled, however, that omission of an element and its function in a combination is an obvious expedient if the remaining elements perform the same functions as before.

Applicants argue that it is not a design choice to have the fuel withdrawal assembly engaged with one of the bosses by one and one-half sealing force. Applicants claim that this limitation complies with Prior art teachings of standard sealing force. This admission of known Prior art would make the limitation known within the art and thus not patentable.

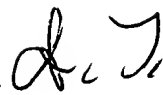
Applicants argue that Huse teaches away from the limitations of claim 5. Huse does show in figure 2 a depression where boss 26 rests which is engaged within the interior space of the tank shell.

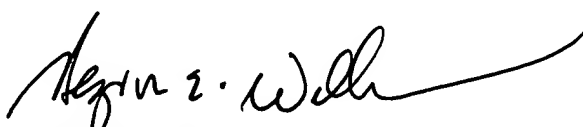
Applicants argue that claims 7 and 19 are not taught by Pemberton et al. specifically Pemberton et al. uses O-rings to seal around the capped end. The claim calls for a capped end that forms a seal. Pemberton et al. discloses sealed capped end (Column 2, lines 10-15 and Figure 2) and further explains that the seal may be completed with an O-ring. The claim does not exclude the use of O-rings to seal the capped end nor does it teach against the use of O-rings in the capped end. Would the invention not work if O-rings were present?

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre' K. Jackson whose telephone number is (703) 305-1522. The examiner can normally be reached on Mon.-Thurs. 7AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (703) 305-4705. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

A.J.   
May 28, 2003

  
HEZRON WILLIAMS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800